

**AGENDA FOR THE BOARD OF ADJUSTMENT MEETING**

October 26, 2012

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, October 26, 2012.
- II. **APPROVAL OF MINUTES** - The Chair will announce that there are no minutes of previous meetings to be considered at this time.
- III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair will sound the agenda in regard to any postponements, withdrawals, and items requiring no discussion.
  1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair will announce that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
  2. **No Discussion Items** - The Chair will ask if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.
- B. **Transcript or Witnesses** - The Chair will announce that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2012-75: 21C LEXINGTON, LLC** - appeals for a variance to reduce the required number of parking spaces from 90 to 45 for a boutique hotel/art museum in the Lexington Center Business (B-2B)/Courthouse Area Overlay (CHA) zone, at 145-151 W. Main Street; 167 W. Main Street and 100 N. Upper Street (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties, nor cause a hazard or nuisance to the public. The applicant has demonstrated that, based on the

operation of their similar “boutique” hotel in Louisville, this proposed hotel will need significantly less parking than other hotels. Additionally, the urban setting of downtown Lexington is a pedestrian-friendly environment with many existing public and private parking options for the few times that their parking demand may exceed what is to be provided.

- b. Granting the requested variance will not negatively alter the pedestrian-friendly character of the downtown area. It could be argued that it further promotes the smart use of existing parking in the downtown area because the applicant is proposing to utilize parking within an existing garage and not attempting to provide new surface parking.
- c. Granting the requested variance will not allow an unreasonable circumvention of the Zoning Ordinance, as almost all uses in the Lexington Center Business (B-2B) zone don't require off-street parking. This site was nearly 100% developed prior to the requirement for hotel parking, and there is no opportunity to provide on-site parking for this project.
- d. The variance is not a result of the willful actions of the appellant, as their needs do not warrant a full compliment of 90 parking spaces.
- e. Requiring the full amount of parking for this type of “boutique” hotel, where the requirement far exceeds the demand based on historic data of this particular use, will require an additional financial burden and hardship to the appellant in order to procure off-site parking agreements in perpetuity.

This recommendation of approval is made subject to the following conditions:

1. The applicant will provide documentation of a renewable parking agreement for at least 45 parking spaces for the proposed hotel prior to issuance of a Zoning Compliance Permit.
2. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy be obtained from the Divisions of Planning and Building Inspection prior to the operation of the hotel use on the subject property.

#### **D. Conditional Use Appeals**

1. **C-2010-53: SOUTHSIDE PUB** - the Board of Adjustment has scheduled a revocation hearing for a conditional use permit, approved on June 25, 2010, for live entertainment and dancing in a Planned Shopping Center (B-6P) zone, at 3650 Boston Road (Council District 9).

Based on a request from the Zoning Enforcement Staff, the Board has scheduled a revocation hearing for case C-2010-53: Southside Pub, which was approved on June 25, 2010. Seven conditions for approval were imposed, and at least two conditions regarding live entertainment have not been complied with. Live entertainment has been provided on Sundays, which is contrary to condition #3 that it be limited to Monday through Saturday; and entertainment has been provided outdoors, which is contrary to condition #4, limiting it to inside the building, with all exterior doors closed when live entertainment is provided (except for ingress and egress). The Board will hear evidence and act on the revocation request.

2. **C-2012-55: STANLEY GROSS** - appeals for a conditional use permit to operate a rehabilitation home in a Neighborhood Business (B-1) zone, at 427 Georgetown Street (Council District 2).

The Staff Recommends: Approval, for the following reason:

- a. A rehabilitation home at this location should not adversely impact the surrounding neighborhood, because it will be under the supervision of a person who has experience in working with recovering addicts, who will also reside on the property; required parking will be met; and public utilities and services are available and adequate for the proposed use.
- b. Provided that the Divisions of Code Enforcement, Building Inspection, Zoning Enforcement, and the Fire Department determine that this facility complies with all health, safety and welfare regulations, and that the corrections of any code issues have been made, this proposed facility can be operated in a safe and healthy manner, and will provide a needed service in the community.

This recommendation is made subject to the following conditions:

1. That the facility be operated at all times in compliance with the submitted application and site plan.
2. That the applicant allow the Divisions of Code Enforcement, Planning, Building Inspection, and the Fire Department to inspect the facility for compliance with life, safety and welfare regulations; and that any violations and/or code issues be corrected prior to the issuance of a Zoning Compliance Permit or a Certificate of Occupancy for the proposed rehabilitation home. Any such corrections must be completed within sixty (60) days of Board approval.

3. That a written parking agreement, approvable by the Division of Planning and the Law Department, be submitted documenting that the required parking is being met prior to the issuance of a Zoning Compliance Permit.
  4. That no more than eight individuals (including one qualified supervisor) reside on the subject property. This number may be required to be less, based on the review by the Division of Code Enforcement and the Fire Department.
  5. That a qualified supervisor lives on the premises to continue operation as a rehabilitation home.
3. **C-2012-60: COHEN REALTY, INC.** - appeals for a conditional use permit to construct an extended-stay hotel with accessory parking in a Professional Office (P-1) and a High Density Apartment (R-4) zone, at 2368 Professional Heights Drive and 120-126 & 128-134 E. Lowry Lane (Council District 4).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as an extended-stay hotel is an appropriate transition between existing commercial development to the south and west, and the residential uses to the north and east.
- b. All necessary public facilities, including any modifications to the stormwater system as deemed necessary by the Divisions of Engineering and Water Quality, will be available and adequate for this use.

This recommendation of approval is made subject to the following conditions:

1. Construction of the extended-stay hotel shall be done in accordance with the submitted application and site plan, or as amended by the Planning Commission, except as noted below.
  2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.
  3. The parking lot shall be paved, with spaces delineated, and landscaped/screened according to the provisions of Articles 16 and 18 of the Zoning Ordinance. In addition, zone-to-zone screening shall be provided as required and approved by the Landscape Examiner prior to the issuance of any building permits for construction.
  4. The parking lots in the R-4 zone shall continue at all times to comply with the provisions of Article 16-3 of the Zoning Ordinance, which describes conditions under which a parking lot may be established and operated in an R-4 zone.
  5. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering and the Division of Water Quality. This plan shall take into account any existing downstream drainage problems.
  6. The open space and tree preservation areas will not be substantially altered by an amended final development plan without prior approval of the Board of Adjustment.
  7. Action of the Board shall be reflected on the Final Development Plan for the property.
4. **C-2012-67: NANCY LUNA** - appeals for a conditional use permit to operate a restaurant with live entertainment in a Neighborhood Business (B-1) zone, at 1416 Village Drive (Council District 11).

The Staff Recommends: Approval, for the following reasons:

- a. A restaurant with indoor live entertainment at this location should not adversely affect the subject or surrounding properties, if the building is soundproofed to the maximum extent feasible, as it is oriented toward other commercial properties, which should help to minimize any potential for noise. In addition, there will be no outdoor speakers allowed as a part of this use.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The restaurant with live entertainment shall be established in accordance with the submitted application and site plan.
2. A Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection, respectively, prior to occupancy as a restaurant with live entertainment.
3. A note reflecting the action of the Board shall be denoted on any amended Final Development Plan for the subject property.
4. Outdoor live entertainment and/or outdoor speakers shall be prohibited, and the doors to the restaurant shall remain closed during the times when live entertainment is present.
5. Hours of operation for live entertainment shall be limited to Friday and Saturday nights, ending no

later than 1:00 am.

6. This use shall be sound-proofed to the maximum extent feasible by using existing technologies, with noise and other emissions not creating a nuisance to the surrounding neighborhood.
5. **C-2012-68: TONY and LISA HODGES** - appeal for a conditional use permit to operate a night club/bar with live entertainment and dancing in a Neighborhood Business (B-1) zone, at 828 Lane Allen Road (Council District 11).

The Staff Recommends: Approval, for the following reasons:

- a. A nightclub with indoor live entertainment at this neighborhood business location should not adversely affect the subject or surrounding properties, as this use has existed at this address previously; and the building will be soundproofed and is oriented toward other commercial properties, which should help to minimize any potential for noise pollution. In addition, there will be no outdoor speakers allowed as a part of this use.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The nightclub with live entertainment shall be established in accordance with the submitted application and site plan.
2. A Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy as a nightclub with live entertainment.
3. A note reflecting the action of the Board shall be denoted on any amended Final Development Plan for the subject property.
4. Outdoor speakers shall be prohibited, and the doors to the restaurant shall not be propped open during the times when live entertainment is present.
5. Hours of operation of the live entertainment shall be limited to Monday through Saturday nights ending no later than 2:00 am.
6. This use shall be sound-proofed to the maximum extent feasible by using existing technologies, with noise and other emissions not creating a nuisance to the surrounding neighborhood.
6. **C-2012-69: WENDY RITCHIE** - appeals for a conditional use permit to provide family child care for up to 12 children in a Single Family Residential (R-1D) zone, at 3088 Glenwood Drive (Council District 6).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adequate off-street and on-street parking is available for this use. A large fenced outdoor play area will be provided. Noise and other disturbances to surrounding property owners are not anticipated, as care for the twelve children will only be provided during daytime hours.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Child care shall be provided in accordance with the submitted application and site plan.
2. All necessary permits, including issuance of an occupancy certificate, shall be obtained from the Divisions of Planning and Building Inspection prior to beginning child care for more than six (6) children at this location.
3. The facility shall at all times operate in compliance with regulations of the Kentucky Cabinet for Health and Family Services.
4. This conditional use shall become null and void should the appellant no longer reside at this location.
7. **C-2012-70: SIMS ENTERTAINMENT GROUP, LLC** - appeals for a conditional use permit to operate a night club with live entertainment and dancing in a Neighborhood Business (B-1) zone, at 815 Euclid Avenue (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as this site has consistently operated as a nightclub since it was first approved for this use by the Board of Adjustment in 1991. Allowing an extension of the hours of operation is appropriate considering that this use is surrounded by other commercial uses and that the Council adopted Ordinance No. 200-2007, allowing increased hours of alcohol sales after the Board's initial approval of this use in 1991.

- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. That no more than 275 patrons be allowed on the subject property at a time, as permitted by the fire code.
  2. That the hours of operation be from 8:30 pm until 2:30 am, Wednesday through Saturday.
  3. That any private parties (no more than 275 persons) be held from 8:30 pm until 2:30 am, Monday and Tuesday.
  4. That no business activity, private or public, be conducted on Sunday.
  5. That some type of food items and a menu be provided on the premises.
  6. That off-site parking be provided for the employees by lease agreement approved by the UCG Law Department; and that the Planning Staff be apprised of the location.
  7. That the nightclub with live entertainment and dancing be established in accordance with the submitted application and site plan.
  8. A Zoning Compliance Permit and a new Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection, respectively, prior to occupancy as a nightclub with live entertainment and dancing.
  9. Outdoor live entertainment and/or outdoor speakers shall be prohibited, and the doors to the nightclub shall remain closed during the times when live entertainment is offered.
8. **C-2012-71: JAMES LAIRD** - appeals for a conditional use permit to establish an athletic club/indoor recreational facility in a Wholesale and Warehouse Business (B-4) zone, at 2551 Regency Road (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. No new construction will be required, and there are not any adjacent or nearby uses that are likely to be adversely impacted. Very little traffic will be generated, and sufficient off-street parking is conveniently located at the front and the rear of the suite that is proposed to be occupied by this use.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The proposed indoor recreational facility (fitness center) will be operated in accordance with the submitted application and site plan.
  2. Within 30 days of the Board's approval, the appellant will provide documentation that the existing rear parking area has been striped for off-street parking.
  3. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to commencing the use of the indoor recreational facility.
9. **C-2012-72: UCKY, LLC** - appeals for a conditional use permit to amend a previously approved site plan for a golf course in the Agricultural Rural (A-R) zone, at 4850 Leestown Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Expansion of the existing golf course is permitted as a conditional use in the Agricultural Rural (A-R) zone with Board of Adjustment approval.
- b. Granting the requested conditional use permit, which will reallocate approved but unused square footage on the site plan, will not adversely affect the subject or surrounding properties since the new construction will be centralized around the existing clubhouse and pavilion well within the interior of this 300+ acre golf course.
- c. All necessary public facilities and services are currently available and adequate for the proposed use, or will be upgraded, as needed with regard to the septic system, to meet the needs of the expanded facilities.

This recommendation of approval is made subject to the following conditions:

1. The improvements on the property will be completed according to the submitted application and site plan, except as noted below.
2. All necessary permits, including a Zoning Compliance Permit, Building Permits, and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to

- construction and occupancy of the proposed facility.
3. The septic system will be re-evaluated by the Fayette County Board of Health prior to the issuance of any building permit, and any necessary modifications will be made.
  4. That a more detailed site plan of the proposed UK team facility be submitted to the Divisions of Planning and Building inspection prior to the issuance of a building permit; and the proposed facility will be limited to 11,628 square feet, unless a like amount of square footage is removed from the existing pavilion.
  5. That any signage comply with Article 17 of the Zoning Ordinance and that it not be internally illuminated.

**E. Administrative Review**

1. **A-2012-45: CHEROKEE PARK NEIGHBORHOOD ASSOCIATION** - requests an administrative review of a Zoning Compliance Permit issued for a mobile MRI facility in a Professional Office (P-1) zone, on property located at 1713 Nicholasville Road (Council District 3).

As this is a 3<sup>rd</sup> party appeal, there is no recommendation for either approval or disapproval. A report will be made at the public hearing.

2. **A-2012-53: EFRAN & VLADIMERA ALAMI** - request an administrative review to determine that a drive-through facility in a Planned Neighborhood Residential (R-3) zone would not constitute expansion of a non-conforming use, on property located at 500-502 East Seventh Street (Council District 1).

The Staff Recommended: Disapproval, for the following reasons:

- a. Establishing a retail drive-through service window at this location, in a Planned Neighborhood Residential (R-3) zone, represents an expansion of a non-conforming use in both scope and area of operation, which is not permitted pursuant to Article 4-3(a) of the Zoning Ordinance.
- b. Establishing the drive-through window service required an alteration to the exterior of the building, and additional land to be used outside of the building (for the gravel drive), neither of which is permitted pursuant to Articles 4-3(e) and 4-3(g) of the Zoning Ordinance.
- c. A drive-through service along the east side of the building has great potential to adversely impact the adjoining residential use, which could negatively impact the existing or future development/ redevelopment of that property. Such an outcome would be contrary to the provisions of Article 7-6(e) of the Zoning Ordinance.

3. **A-2012-62: CLYDE SIMMONS, JAMIE SHIER, AMY CLARK, SHERRI HUMAN and KAREN BASSETTI** - appeal for an administrative review of the Division of Building Inspection's issuance of a permit for paving in the required front yard, in a Single Family Residential (R-1E) zone, within the defined Infill & Redevelopment Area, at 626 Kastle Road (Council District 3).

As this is a 3<sup>rd</sup> party appeal, there is no recommendation for either approval or disapproval. A report will be made at the public hearing.

4. **A-2012-65: MARK BARKER and COLUMBIA HEIGHTS NEIGHBORHOOD** - appeal for an administrative review of the Division of Building Inspection's issuance of a permit for a 3,000+ square-foot duplex in a Two Family Residential (R-2) zone, within the defined Infill & Redevelopment Area, at 539 Columbia Avenue (Council District 3).

As this is a 3<sup>rd</sup> party appeal, there is no recommendation for either approval or disapproval. A report will be made at the public hearing.

5. **A-2012-66: MARK BARKER and COLUMBIA HEIGHTS NEIGHBORHOOD** - appeal for an administrative review of the Division of Building Inspection's issuance of a permit for a 3-car carport/garage in a Single Family Residential (R-1E) zone, within the defined Infill & Redevelopment Area, at 448 Park Avenue (Council District 3).

As this is a 3<sup>rd</sup> party appeal, there is no recommendation for either approval or disapproval. A report will be made at the public hearing.

6. **A-2012-73: ALICE LEVY SETTLE** - appeals for an administrative review of the Division of Building

Inspection's denial of a permit for a second kitchen in the Agricultural Rural (A-R) zone, at 601 The Grange Lane (Council District 12).

The Staff Recommends: Approval, for the following reasons:

1. In Article 1-11 of the Zoning Ordinance, the consideration of the definitions of "housekeeping unit" and "kitchen facilities" work in harmony to define a dwelling unit so that the presence of multiple kitchens would indicate whether or not there are multiple dwelling units. In this instance, the floor plans of the residence indicate that the kitchen facilities are not intended for, or conducive to, having separate dwelling units. As such, there is a reasonable expectation that a single housekeeping unit will be occupying the dwelling, with no circumvention of the intent of the Zoning Ordinance.
2. The subject structure is clearly designed as, and was permitted for, use as a single dwelling unit. Given the overall size of the structure and diversity of activities to take place there, it is reasonable to characterize the additional kitchen facility as an amenity that is accessory to a single living unit.

IV. **BOARD ITEMS** - The Chair will announce that any items a Board member wishes to present will be heard at this time.

- A. **Resolution for Louis Stout** - A resolution honoring the memory and service of Louis Stout, former Chair of the Board of Adjustment who died in September, will be presented.
- B. **Election of Officers** - At the January meeting each year, the Board elects a Chairperson, a Vice-Chairperson, a Secretary and any other officers it deems necessary. Nominations are made from the floor, and the candidate receiving the majority vote of the membership in attendance is declared elected and takes office at the close of the meeting. The present officers are: Chair - Vacant; Vice-Chair - Kathryn Moore; Secretary - Jim Griggs. Due to the death of Louis Stout, new officers will be elected in the same manner as the general election of officers in January.
- C. In the past, the duties of Secretary have been delegated to the Planning Manager or a staff member appointed by the Planning Manager. The Chair will request action on this item.

VI. **STAFF ITEMS** - The Chair will announce that any items a Staff member wishes to present will be heard at this time.

- A. **2013 Meeting and Filing Schedule** - As part of its Bylaw-related duties, each year the Board of Adjustment adopts the Official Meeting and Filing Schedule for the following year. The Meeting and Filing Schedule for 2013 is in draft form and will be presented to the Board for review and/or discussion prior to its official adoption.

VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be November 30, 2012.

VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.